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*MAKING DEDUCTIBLE DIVIDEND ELECTIONS UNDER AB 263*

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PURPOSE OF BULLETIN	To advise our staff on how taxpayers should prepare amended or original returns when making an election under AB 263.
BACKGROUND	<p>Previously, the California Court of Appeal ruled that the deduction for dividends received by the parent corporation from insurance company subsidiaries under R&amp;TC Section 24410 was unconstitutional. (Ceridian Corp. v. Franchise Tax Board (2000) 85 Cal App 4th 875 (modified 86 Cal App 4th 483). FTB staff had interpreted the court decision to mean that there was no longer a dividend-received deduction for these dividends. The corporate taxpayer community disagreed.</p> <p>AB 263 legislatively resolves this by allowing taxpayers to deduct qualified dividends received by a parent corporation from an insurance company subsidiary for tax years beginning on or after January 1, 2004</p> <p>For more information regarding the dividend-received deduction, refer taxpayers to <a href="#">FTB Notice 2004-6</a> on our Website at <a href="http://www.ftb.ca.gov">www.ftb.ca.gov</a> (type "FTB Notice 2004-6" in the Search field).</p>
OPEN YEAR ELECTIONS	<p>Taxpayers may elect similar dividend treatment for open years. Open years are defined as tax years ending on or after December 1, 1997, and commencing before January 1, 2004. Taxpayers must make any open year elections by March 28, 2005.</p> <p>For additional information, see "MAKING THE ELECTION ON AN AMENDED RETURN."</p>
DETERMINING QUALIFIED DIVIDENDS	<p>Because of the complexity in determining qualified dividends, refer taxpayers to AB 263, and advise them to read R&amp;TC section 24410 (c) for the definition of qualified dividends.</p> <p>Qualified dividends are defined in AB 263. Taxpayers can access this information by going to our Website at <a href="http://www.ftb.ca.gov">www.ftb.ca.gov</a> (type "FTB Notice 2004-6" in the Search field).</p>
ELECTION INFORMATION	<p>The taxpayer may make the election on an original or amended return. To make a valid election the taxpayer must meet <b>all</b> of the following requirements:</p> <ul style="list-style-type: none"><li>• File a return for any open year by March 28, 2005, <b>stating</b> that it is making the election provided for by AB 263. An open year is one in which the Franchise Tax Board may propose an assessment or allow a claim for refund, or for which a protest, appeal, or litigation case is pending on this issue. If the statute</li></ul>

of limitations is open for a year on September 29, 2004, the taxpayer may make the AB 263 election for that year any time between September 29, 2004, and March 28, 2005.

**Important:** Filing a return and computing the tax due pursuant to the method allowed by AB 263 is **not** sufficient to constitute an election. The taxpayer must include a statement with the return indicating it is making the election allowed under AB 263. An accuracy related penalty may be assessed if the taxpayer files a return computing the tax due under the method allowed by AB 263 without making the election.

- The taxpayer must pay any amounts due under AB 263 by March 28, 2005.
- An election for any one open year constitutes an election for all open years.

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#### MAKING THE ELECTION ON AN AMENDED RETURN

Taxpayers should type or print "AB 263 Election" on the top of side 1 of Form 100X. On side 2 of Form 100X, Part V, Line 2 (which requests an explanation of the changes to the prior filed return), the taxpayer should type or print a statement that they are making the dividend received deduction election in accordance with AB 263. The taxpayer should attach supplementary schedules as necessary to compute the deduction.

**Filing one amended return for all open years:** AB 263 provides that the taxpayer may make the election by filing **one amended** return to elect for the entire period. Although the law allows an election by filing only one amended return, filing separate amended returns for each year affected by the election will facilitate processing. Taxpayers who make the election by filing only **one amended** must include separate supplemental schedules for each year to which the election applies. The schedules must identify all amounts due in order by year, to ensure that all amounts are paid and properly posted to the taxpayer's account by March 28, 2005.

**Note – Refund Claims:** If amending to claim a refund, the taxpayer must file a separate claim for each open year. See REFUND CLAIMS for additional information.

**NPAs, Protests or Appeals:** Taxpayers making the election on a taxable year for which an NPA has been issued, and for which the year is in protest or appeal, **must** still file an amended return reflecting the AB 263 election. For the election to be valid, the taxpayer must pay all amounts due pursuant to the election by March 28, 2005. The taxpayer must also inform the protest hearing officer or appeals attorney of the amended return filing.

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#### MAKING THE ELECTION ON AN ORIGINAL RETURN

Taxpayers can make an election on an original return by typing or printing "AB 263 Election" on the top of the front page of the tax return, and attaching a statement indicating that the dividend received deduction election is being made in accordance with AB 263. They should attach supplementary schedules as necessary to compute the

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deduction.

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AMOUNTS  
DUE **MUST** BE  
PAID BY  
MARCH 28,  
2005

AB 263 requires that all additional amounts due because of the election must be paid by March 28, 2005. Failure to pay all additional amounts due as a result of the election by March 28, 2005, can invalidate the election.

*Additional amounts due* includes tax, interest, and any applicable penalties.

*Tax* means the amount of additional tax shown on the amended return and schedules (for multiple years) or the original return as a result of the election.

*Interest* is the amount of statutory interest from the due date of the return, as computed in good faith by the taxpayer, on the additional tax shown amended return and schedules (for multiple years) or the original return.

*Penalties* are those penalties that were assessed, either by the taxpayer on the original return, or by the department as reflected in a notice of proposed assessment or notice of tax due, for a year issued prior to the date of the amended return, such as a late filing penalty.

REFUND  
CLAIMS

Taxpayers who have a refund based on the election for any year must file a claim for refund for **each** open year for which the statute of limitations for filing a claim has not expired. AB 263 does not change the statute of limitations or the requirement to file a claim for refund.

**Refund claim already has been filed:** If the taxpayer has already filed a refund claim for any of the open years based upon the deductibility of dividends received from an insurance company, making AB 263 election for any of open years will be treated as amendment of that claim to conform it to the terms of the election.

WHERE TO  
MAIL  
RETURNS

Taxpayers should send all amended or original returns making an election under AB 263 to:

Karen Smith, Legal Division  
Franchise Tax Board  
P.O. Box 1720  
Rancho Cordova CA 95741-1720

Karen will have the returns reviewed as quickly as possible to identify any problems with the election, and try to have them processed before March 28, 2005.

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TAXPAYER  
INQUIRIES

Taxpayers having inquiries regarding the election under AB 263 may contact Karen Smith at (916) 845-3347.

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